## REMARKS-General

The amended independent claim 27 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All claims 27-30 and 35-46 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

### Response to Rejection of Claims 27-46 under 35USC103

The Examiner rejected claims 27-46 over Wotton (US 6,000,171) in view of Vatan (French Patent FR2536247).

Pursuant to 35 U.S.C. 103: "(a) A patent may not be obtained thought the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made."

In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Wotton which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Vatan at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

The applicant respectfully submits that in order to determine whether the differences between the subject matters sought to be patent as a whole of the instant invention and the primary prior art, Wotton, are obvious in view of the supplemental cited art, Vatan, we have to identify all the differences between the claims of the instant inventions and Wotton. The applicant respectfully identifies the differences between the claims of the instant invention and Wotton as follows:

(a) In claim 27, "a plurality of elongated slits spacedly and inclinedly cut along two longitudinal edges of the tail portion of the binding member" is claimed to form a plurality of locking teeth respectively, wherein Wotton fails to teach any locking tooth formed at the posable figure.

(b) The claim 27 claims the step of "twisting the tail portion of the guiding member to substantially align with an adjacent edge of a locker slot", however, Wotton merely teaches a step of positioning a pair of appendages of the figure without any mention of any twisting movement of the appendages.

(c) In claim 27, "a locker slot, having a triangular shape, formed at the head portion of the guiding member" is claimed for the head portion of the guiding member sliding into the locker slot, wherein Wotton fails to teach any locker slot formed on the figure.

(d) The claim 27 claims the step of "slidably inserting the tail portion of the guiding member through the locker slot" to form a binding loop around the growing plant with the supporter, wherein Wotton merely teaches the step of bending the pair of appendages about the plant stem without any mention of any slidably inserting movement of the appendages.

(e) The claim 27 claims the step of "twisting the tail portion of the guiding member back to its original orientation", wherein Wotton fails to teach any twisting movement of the appendages at any orientation.

(f) In claim 27, "a holding neck portion of the corresponding locking tooth is locked at the locker slot by a transverse width thereof so as to retain said loop diameter of the binding loop" is claimed to fittingly bind the growing plant with the supporter,

wherein Wotton merely teaches the appendages are bent about the plant stem and the stake to hold the plant to the stake.

(g) The claim 27 claims "a transverse width of the locker slot is larger than a thickness of the guiding member and is larger than a width of the holding neck portion of each of the locking teeth", wherein Wotton fails to teach the size of the locker slot with respect to the locking tooth.

(h) Wotton not contain the steps of "releasing the guiding member from the growing plant when the growing plant grows to increase a diameter thereof" and "re-binding the guiding member around the growing plant with the supporter" as claimed in claim 28 in addition to what is claimed in claim 27 as a whole.

(i) Wotton does not mention any "locker slot having a height at least equals to the width of the guiding member" as claimed in claims 29 to 30 in addition to what is claimed in claim 27 as a whole.

(j) Wotton fails to teach "each of the locking teeth has a guiding edge having an outer end formed at the longitudinal edge of the tail portion of the guiding member and an inner end inclinedly and inwardly extended on the guiding member towards the tail end thereof" to define the holding neck portion on the guiding member at the inner end of the guiding edge of each of the locking teeth as claimed in claims 34 to 38 in addition to what is claimed in claim 27 as a whole.

(k) Wotton fails to teach "the guiding edge of each of the locking teeth is extended inclinedly at a direction corresponding to an inserting direction of the tail portion of the guiding member" as claimed in claims 39 to 42 in addition to what is claimed in claim 27 as a whole.

(l) Wotton does not teach "the tail end of the guiding member has a tapered shape having a width substantially smaller than the transverse width of the locker slot" as claimed in claims 43 to 46 in addition to what is claimed in claim 27 as a whole.

Whether the claims 27-30 and 35-46 as amended of the instant invention are obvious depends on whether the above differences (a) to (l) between the instant

invention and Wotton are obvious in view of Vatan at the time of the invention was made.

Furthermore, the applicant respectfully submits that when applying 35 USC 103, the following tenets of patent law must be adhered to:

(a) The claimed invention must be considered as a whole;

(b) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;

(c) The references must be viewed without the benefit of hindsight vision afforded by the claimed invention; and

(d) Reasonable expectation of success is the standard with which obviousness is determined.

Also, "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." *Libbey-Owens-Ford v. BOC Group*, 4 USPQ 2d 1097, 1103 (DCNJ 1987).

Vatan merely teaches a plant binder having two arms 4, 5, a slot 4' formed at one of the arms 4 and a plurality of teeth 5' formed at another arm 5, wherein the two arms 4, 5 are folded to bind around the plant only. However, Vatan does not mention any plant binder for binding the growing plant with the supporter. In addition, Vatan merely teaches the teeth 5' are formed in triangular shape to engage with the slot 4' without any suggestion of how the elongated slit be possibly formed by spacedly and inclinedly cutting along two longitudinal edges of the tail portion of the binding member.

The Examiner alleges Wotton as modified teaches wherein the elongated slits are inclinedly cut along the tail portion of the binding member. However, neither Wotton nor Vatan provides any of such suggestion or description in its disclosure.

"To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor

and with no knowledge of the claimed invention, would select the elements from the cited art references for combination in the manner claimed... [T]he suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness..." *In re Gorman*, 933 F.2d 982, 986, 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991).

Accordingly, the applicant believes that neither Wotton nor Vatan, separately or in combination, suggest or make any mention whatsoever of the difference subject features (a) to (l) as claimed in the amended claims 27-30 and 35-46 of the instant invention.

Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

**The Cited but Non-Applied References**

The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 27-30 and 35-46 at an early date is solicited.

Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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**CERTIFICATE OF MAILING**

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

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